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2 **COMMONWEALTH OF KENTUCKY**

3 **BEFORE THE PUBLIC SERVICE COMMISSION**

4 **In the Matter of:**

5
6 **REVIEW OF FEDERAL COMMUNICATIONS)**
7 **COMMISSION'S TRIENNIAL REVIEW ORDER) CASE NO.**
8 **REGARDING UNBUNDLED REQUIREMENTS) 2003-00379**
9 **FOR INDIVIDUAL NETWORK ELEMENTS)**

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14 **REPLY TESTIMONY**
15 **OF**
16 **JEFFREY W. REYNOLDS**

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25 **ON BEHALF OF KENTUCKY ALLTEL, INC.**

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38 **Filed: March 31, 2004**
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1 **REPLY TESTIMONY OF JEFFREY W. REYNOLDS**

2
3 **Q. Are you the same Jeffrey W. Reynolds who filed direct testimony in this**
4 **proceeding?**

5 **A. Yes, I am.**
6

7 **Q. What is the purpose of your reply testimony?**

8 **A. The primary purpose of my reply testimony it to demonstrate that using the ILEC wire**
9 **center as the relevant geographic market is far too narrow of an approach when**
10 **analyzing whether competitors are impaired without access to unbundled local**
11 **switching for mass market customers. In addition I will rebut the broad allegations**
12 **made by Mr. Wood concerning the inability of CLECs to serve mass market**
13 **customers economically. Finally I will discuss the “triggers” proposed by the FCC**
14 **and establish that there is no basis for ignoring application of the self-provisioning**
15 **trigger. My reply testimony focuses on the direct testimony of Mr. Wood, AT&T**
16 **Communications of the South Central States; Dr. Bryant, MCIMetro Access**
17 **Transmission Services and MCI WorldCom Communications; and Mr. Gillan,**
18 **CompSouth. I have also provided a brief discussion on the DC Circuit’s decision and**
19 **its implications for this proceeding.**
20

21 **Q. How is this proceeding impacted by the March 2, 2004 order of the United States**
22 **Court of Appeals for the District of Columbia Circuit (“DC Circuit Court”) in**
23 **the appeal of the FCC’s Triennial Review Order (“TRO”)?**

1 **A.** The decision of the DC Circuit Court vacates the TRO which is the basis for this
2 proceeding. It is therefore uncertain why this proceeding should continue. ALLTEL
3 is continuing to participate in this proceeding as if the TRO continues to be in effect.

4
5 **Q.** **What is the market definition put forth by Dr. Bryant?**

6 **A.** Although he states that individual customer location is the theoretical ideal for
7 defining a market he indicates that the wire center is the proper level at which to
8 define the relevant geographic market (Bryant Direct pg. 44) since it balances
9 “accuracy” and “practicality” (Bryant Direct pg. 29). He suggests that wire centers are
10 “the most natural geographic boundaries for purposes of defining markets for several
11 reasons.” (Bryant Direct pgs. 29 & 30). Dr. Bryant then goes on to state that the costs
12 of providing service vary widely from one wire center to another. Wire centers are not
13 natural geographic boundaries – they are a construct of the ILEC network and in most
14 cases do not follow geography or governmentally defined boundaries. Additionally,
15 wire center costs are not as variable as Dr. Bryant suggests. CLECs are able to serve
16 customers from a single switch regardless of wire center location. In paragraph 495 of
17 the TRO the FCC indicates that the market should not be defined narrowly so that a
18 competitor serving the market could take advantage of economies of scale and scope.
19 The FCC’s expectation is that switching has a broader market definition than loops or
20 transport (TRO par. 1536).
21 Obviously determining impairment on a customer-by-customer basis is completely
22 impractical. The wire center is not an improvement. With over 550 wire centers listed
23 in NECA Tariff FCC No. 4 for Kentucky, a wire center definition of market is overly
24 granular with no corresponding increase in accuracy.

1
2 **Q. What guidance does the FCC provide the states in defining the geographic**
3 **market?**

4 A. The FCC states that the relevant geographic market cannot be the entire state nor
5 should the analysis be so narrowly defined “that a competitor serving that market
6 alone would not be able to take advantage of available scale and scope economies
7 from serving a wider market” (TRO par. 495).

8 In defining markets the state shall take into consideration the locations of mass market
9 customers actually being served by competitors, the variation in factors affecting
10 competitors’ ability to serve each group of customers and competitors’ ability to target
11 and serve specific markets profitably and efficiently using currently available
12 technologies. ALLTEL’s definition of the Greater Lexington Market meets all of the
13 FCC’s criteria and given the number of switch-based competitors in that market
14 demonstrates that the Greater Lexington market is relevant and the proper definition.
15 This market is comprised of a seamless network with similar economic characteristics.
16 The customers in the Greater Lexington market have similar communications needs
17 and can be easily served by a number of switched-based providers, many already
18 collocated in ALLTEL’s central offices.

19
20 **Q. Why does ALLTEL’s definition of geographic market constitute a realistic**
21 **definition that balances granularity and practicality?**

22 A. ALLTEL has defined the “Greater Lexington” geographic market as being composed
23 of Lexington and contiguous ALLTEL areas that seamlessly adjoin each other
24 (Reynolds Direct pg. 4). This market definition allows the scale and scope economies

1 set forth in the TRO to be realized by a competitive provider by allowing them to take
2 advantage of the economic characteristics of wire centers that are grouped in a specific
3 portion of Kentucky. Almost 20 CLECs have switches capable of serving customers
4 in ALLTEL markets (Reynolds Direct pg. 6), empirical evidence that a grouping of
5 contiguous wire centers constitutes a realistic market definition
6

7 **Q. Why would a CLEC wish to define the market at a very granular level?**

8 A. By defining markets at the wire center level (or below) competitive entrants are
9 attempting to violate the “bright line” rules the FCC created with the self-provisioning
10 triggers. By establishing the market at the wire center level Dr. Bryant seeks to limit
11 the number of customers that would be in an unimpaired market while keeping an
12 adjoining wire center with virtually identical economic characteristics as one that
13 continues to be impaired relative to unbundled local switching.

14 Excess granularity ignores how communications services are actually marketed and
15 deployed in a competitive market. An overly granular definition, such as wire center,
16 ignores this.
17

18 **Q. What are the factors that are considered when entering a market?**

19 A. CLECs do not make market entry decisions on a wire center by wire center basis.
20 This would presume that cost alone dictates the entry decision. To a large extent the
21 decisions related to cost of entry are buffered because ILEC prices, both retail and
22 wholesale, are “averaged” across wire centers.

23 The decision to serve a contiguous wire center is therefore not a function of the cost of
24 serving that wire center but more a function of the concentration of high margin

1 customers. In ALLTEL's "Greater Lexington" market the highest concentration of
2 high margin customers is undoubtedly in Lexington proper but the economic
3 parameters of the adjoining areas are similar enough to allow a competitive entrant to
4 realize the economies of scale and scope for that market inherent in that network. It is
5 not the cost differences in wire centers but the revenue opportunities inherent in a
6 given market that determine entry by competitor. Competitors are not constrained by
7 the costs of a legacy network designed to ubiquitously provide service. From a cost
8 perspective they are able to take advantage of technological changes that permit
9 serving multiple wire centers using a single switch. This can be combined with the
10 marketing efficiencies of serving a regional i.e. multiple wire centers, area.

11 ALLTEL's Greater Lexington market meets all the relevant parameters for market
12 definition that are lacking in a wire center based definition.

13
14 **Q. If the self-provisioning triggers are met is there any opportunity for a continued**
15 **finding of impairment?**

16 A. Once the triggers have been met the burden of proof shifts to the state if they want to
17 continue to find the market impaired. This would require the state commission to
18 petition the FCC. Dr. Bryant on pages 20 and 21 of his direct testimony suggests that
19 in making its decision the Commission should err on the side of finding impairment
20 "...because a false finding of no impairment would cause irrevocable harm, whereas a
21 false finding of impairment has only temporary consequences, the cost to society of
22 the former (Type I) error is far greater than the cost of the latter error" (Bryant – page
23 21). It is clear that the "harm" Dr. Bryant is anticipating is the financial harm to the
24 CLEC if it does not have access to unbundled local switching at a price far below its

1 cost. In providing this “warning” he is proposing a “gloom and doom” scenario in an
2 attempt to ignore the intent of the triggers by forcing an overly granular analysis with
3 a resulting finding of impairment. The actual harm comes in a continued finding of
4 impairment where it doesn’t exist. Continued access to unbundled local switching and
5 UNE-P at levels that are below cost allows for uneconomic competition and a real
6 threat to universal service. The Act was intended to balance competitive and universal
7 service needs. A finding of impairment where it does not exist places very real
8 burdens on the continuation of universal service.

9
10 **Q. Does the existence of UNE-P have any relevance in evaluating whether**
11 **impairment exists for a given geographic market?**

12 A. Mr. Gillan in his direct testimony discusses in depth his analysis of the competitive
13 profile of UNE-P in Kentucky. While he declines to suggest a relevant market prior to
14 reviewing the direct testimony of the ILECs, specifically BellSouth, he opines that the
15 relevant geographic market should reflect a competitive profile similar to that
16 achieved under a UNE-P environment. This approach is completely unfounded. The
17 self-provisioning trigger is determined by the presence of switch-based competitors in
18 the market, there is nothing in the TRO that suggests that such deployment need
19 duplicate the characteristics of UNE-P.

20 The existence of UNE-P obscures the competitive landscape. Actual switch
21 deployment by a competitor is the appropriate measure for determining the level of
22 competition and relative impairment in a given market. Switched based competition
23 exists in the Greater Lexington market thereby making it unnecessary to evaluate the

1 ongoing need for UNE-P and access to unbundled local switching. Switch-based
2 competition is alive and well in the Greater Lexington market with no impairment.
3

4 **Q. Is it necessary to distinguish between “enterprise” switches and “mass-market”**
5 **switches in conducting the trigger analysis?**

6 A. In the TRO the FCC discusses enterprise switches and mass-market switches. As a
7 practical matter the actual switching device is the same for enterprise or mass-market
8 customers. Mr. Gillan on page 39 of his direct testimony attempts to “disqualify”
9 certain switches by narrowly defining the types of services provided by the switch.
10 The switches serving the Greater Lexington market are mass-market switches both in
11 function and in utilization. Mr. Gillan, like Dr. Bryant, attempts to “end-run” the
12 intent of the self-provisioning trigger rules by imposing a series of burdensome and
13 unnecessary criteria. As BellSouth witness Tipton pointed out in her direct testimony,
14 the self-provisioning trigger is merely a question of counting switches. (Tipton Direct
15 Page 4 and 5)
16

17 **Q. On page 4 of his direct testimony Mr. Wood discusses an “elusive formula” that**
18 **CLECs have been unable to find that prevents them from deploying their own**
19 **local circuit switching equipment to serve mass market customers. Does this**
20 **formula exist for ALLTEL’s Greater Lexington market?**

21 A. Facilities based CLECs continue to enter the Greater Lexington market, including
22 AT&T. As shown in my direct testimony the self-provisioning triggers have been met
23 for the Greater Lexington market – empirical evidence that CLEC business cases exist

1 that provided economically viable solutions for deploying unbundled local switching
2 to mass market customers.

3
4 **Q. What is the best test for determining the market definition?**

5 **A.** ALLTEL's definition using the Greater Lexington area is a "real-world" definition.
6 Switch based competitors are actually providing services to mass market customers in
7 the areas with no reliance on unbundled local switching or UNE-P. To revert to a
8 market definition that artificially finds impairment where none exists is contrary to the
9 TRO and logic.

10
11 **Q. Please summarize your reply testimony.**

12 **A.** My reply testimony demonstrates that there is no longer a need to find that CLECs are
13 impaired without access to unbundled local switching for serving mass market
14 customers where the self-provisioning trigger has been met, in this case the Greater
15 Lexington market. It is clear that the CLECs presenting direct testimony in this
16 proceeding are seeking to retain the benefits of uneconomic competition provided by
17 unbundled local switching and UNE-P by attempting to complicate and subvert the
18 "bright-line" trigger rules established in the TRO.

19
20 **Q. Does this conclude your reply testimony?**

21 **A.** Yes, at this time.

Respectfully submitted,

**KENTUCKY ALLTEL, INC. and
ALLTEL KENTUCKY, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Testimony of Jeffrey W. Reynolds was served on parties participating in electronic transmission by electronic mail, and that all other parties on the attached service list were notified by letter of the filing of this document, and were given an opportunity to receive a paper copy of this document by making a request to the undersigned attorney.

This 31st day of March, 2004.

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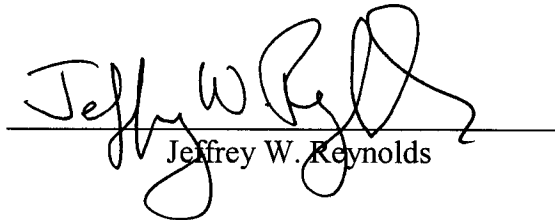
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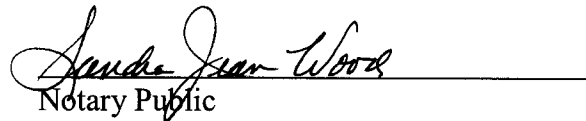
Jeffrey W. Reynolds, being duly sworn according to law, deposes and says that he is a principal in the consulting firm of Parrish, Blessing and Associates, Inc., consultants for ALLTEL Communications, Inc., and that in this capacity he is authorized to and does make this Affidavit on behalf of Kentucky ALLTEL, Inc. ("Kentucky ALLTEL"), and that the facts set forth in the foregoing testimony are true and correct to the best of his knowledge, information and belief.



Jeffrey W. Reynolds

Sworn and Subscribed to before me this 30th day of March, 2004.

(SEAL)



Notary Public

My Commission Expires:

September 1, 2011

